

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 131****[FRL-7522-5]****RIN-2040-ZA0C****Water Quality Standards for Kansas****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is promulgating a primary contact recreation use designation for 1,056 waters, an expected aquatic life use designation for one of these waters, and a secondary contact recreation use designation for 230 waters in the State of Kansas to replace the use designations for those waters that EPA disapproved in 1998. EPA is promulgating these final water quality standards for the State of Kansas at this time pursuant to a court order requiring the Administrator to sign a final rule by June 30, 2003. Once the State of Kansas submits the necessary analyses and any corresponding changes to its water quality standards for specific waters and EPA approves that submission, EPA will initiate a rulemaking to withdraw this regulation for those waters.

DATES: This regulation is effective August 6, 2003.

ADDRESSES: The public record for this rulemaking has been established, is located at EPA Region 7, Information Resource Center, 901 North 5th Street, Kansas City, Kansas 66101, and can be reviewed between 8 a.m. and 4:30 p.m. Central Time, Monday through Friday, excluding legal holidays. For further information regarding access to the docket materials, call (913) 551-7241. You may have to pay a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning today's final rule, contact Mr. Martin Kessler, Public Affairs Specialist at r7actionline@epa.gov or at U.S. EPA Region 7, Office of External Programs, 901 North 5th Street, Kansas City, Kansas, 66101 (Telephone: 913-551-7003).

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I. Potentially Affected Entities

Citizens concerned with water quality in Kansas may be interested in this rulemaking. Entities discharging pollutants to waters of the United States in Kansas could be indirectly affected by this rulemaking because water quality standards are used in determining water quality-based effluent limitations included in National Pollutant Discharge Elimination System (NPDES) permits. Categories and entities that may indirectly be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to surface waters in Kansas.

Category	Examples of potentially affected entities
Municipalities	Publicly-owned treatment works discharging pollutants to surface waters in Kansas.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility may be affected by this action, you should carefully examine today's rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

EPA notes that nothing in this rulemaking—which establishes “primary contact recreation” as a Clean Water Act (CWA) use designation for 1,056 waters, or “expected aquatic life use” for one of these waters, and “secondary contact recreation” for 230 waters—affects the private property rights of landowners to deny public access to their own property. Use designations, such as those codified today, help establish water quality goals for particular water bodies; they do not create or abridge property rights regarding access to such waters. To illustrate this point, EPA notes that most of these waters had been subject to the State's default “secondary contact recreation” use designation until November 2001 (when the State removed this provision and EPA approved that action). That use designation, which commonly refers to recreational wading and other uses not likely to result in full-body immersion, had applied to these waters since at least 1994, and in many cases for years before that. However, EPA is not aware that any individual has interpreted that State use designation (made solely for CWA purposes) as official government sanction to enter private property for the purpose of wading in the streams so designated. Consequently, EPA has no reason to believe that this situation will change as a result of EPA's use designations today. The only difference between the State action and EPA's action today is the type of use designated, not whether the waters are subject to a use designation in the first instance.